

# ***Parents' Attorneys' Role in Child Welfare Proceedings***

**WY CJP Permanency Series**

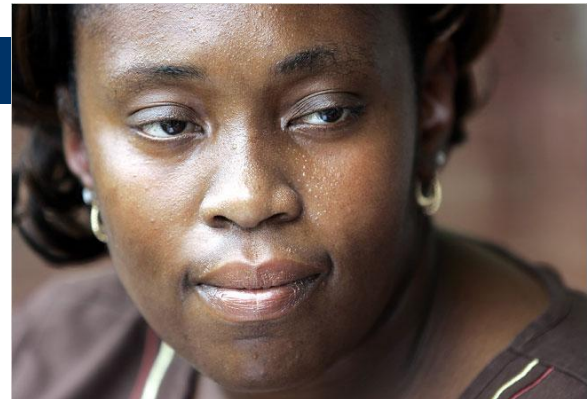
**April 14, 2011**

***Mimi Laver***

**ABA Center on Children and the Law**

**Director, Legal Training**

# *Why it matters . . .*



# Here's What Parents Say

- “My baby’s daddy’s lawyer didn’t seem to know anything. Some lawyers make little effort. My lawyer really likes his work; he is very compassionate...lawyers need to get to know their clients and respect them. I wish more was like that.”
- **“Just make me feel like you hear me...**A good lawyer stays informed, calls back, checks in with clients. We don’t talk after court. Communication is the key. He expresses my wishes in court but the way he puts it, it isn’t right...My first lawyer was great, fought for me, knew what I was trying to do, how to get over the barriers....My lawyer now is slowing down...[she] doesn’t let me participate but goes along with what DHS tells her.”

*From Legal Representation for Parents in Child Welfare Proceedings: A performance-based analysis of MI practice. ABA 2009*

# Why is Better Representation So Important?

- Fairness
- Better outcomes for families
- Empower parents
- Allows courts to identify and treat core issues
- Breaks the Cycle

# The families we serve are:

- Poor
- From disadvantaged/marginalized communities
- Primarily women
- Individuals who've just had their children taken away from them
- Confused, frightened, upset, angry, hostile, ashamed
- Individuals who may have serious problems: drug use, domestic violence, mental illness, etc.

## But, they are also:

---

- Strong
- Resilient
- Resourceful
- Caring
- Committed
- Experts on their children
- People

# Improved Advocacy – What does it Look Like?

The best parents' attorneys:

- Spend time getting to know their clients
- Know their work outside the courtroom is at least as important as in-court advocacy
- Know how to advise clients re: how to collaborate and navigate within the child welfare system
- Are well-versed in law and the burdens of proof
- Don't try to do it alone
- Identify their clients' parenting strengths

# Work Outside the Courtroom

- Attend meetings with client
- Prepare client in advance
- Work to find relatives to help
- Communicate with agency workers, service providers and opposing counsel
- Get involved in systems change
- Coordinate with legislature



# Parents' Representation Nationally

- More and more states are focusing on parents' representation
  - CIP initiatives like Arkansas and California
  - Assessments ex. MI, WY
- Promising programs throughout the country (institutional as well as supporting sole practitioners)
- National Project to Improve Representation for Parents in the Child Welfare System
- Development of national and state standards
- National Reunification Day – a great focus on families!  
[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/nrd.html](http://www.americanbar.org/groups/child_law/projects_initiatives/nrd.html)

# National Standards

- Overview of Project
  - Standards for Children's attorneys – 1996
  - Standards for Agency Attorneys – 2004
  - Standards for Parent's Attorneys – 2006
- Goals of the Projects

The standards promote quality representation and uniformity of practice throughout the country for attorneys in child abuse and neglect cases.
- Members of Subcommittees

# Structure of Standards

- “Black Letter” Standards.  
Requirements written in bold.
- “Actions.”  
Provide additional discussion on how to fulfill the standard; implementing each standard requires the accompanying action.
- “Commentary”  
Discussion of why the standard is necessary and how it should be applied.
- Model Rules of Professional Conduct are referenced

# Themes of Parent Attorney Standards

- Client participation in representation
- Preparation
- Multidisciplinary model
- Advocacy outside the courtroom

# Elements of Standards

Parents Attorney Standards fall into several categories:

General – includes:

- participating in local training and mentoring
- understanding relevant laws
- protecting parents' decision-making rights
- representing in pre-petition phase of case
- avoiding continuances
- communicating with other professionals

# Elements of Standards

## Relationship with the Client, Parent Attorney

Relationship with client, includes:

- empower client to direct representation
- duty of loyalty
- provide contact information
- communicate/counsel client regularly
- provide documentation
- awareness of conflicts
- missing parent issues
- incarcerated and mentally ill parent issues
- cultural competency

# Elements of Standards

## Investigation and Discovery, Parent Attorney

### Investigation includes:

- conduct thorough investigation
- interview client before each hearing

### Discovery includes:

- review agency case file
- obtain necessary documents
- use formal discovery methods as needed

# Elements of Standards

## Court Preparation, Parent Attorney

Court preparation includes:

- develop case theory and timeline
- make all filings timely/ research legal issues
- engage in case planning
- advocate for regular visitation
- engage in settlement negotiations and mediation
- prepare all witnesses including client
- obtain expert witnesses and interview opposing counsel's experts



# Elements of Standards

## Hearings, Parent Attorney

Hearings includes:

- prepare for hearings, motions and objections
- present/cross examine witnesses
- participate in jury selection
- request closed proceedings if appropriate
- make opening and closing
- prepare findings of fact, conclusions of law and orders

# Elements of Standards

## Post Hearing, Parent Attorney

Post hearings/appeals includes:

- review court orders for accuracy/ review with client
- make efforts to ensure client abides by order
- discuss appeal with client
- file appellate paperwork timely
- request expedited appeal
- communicate results to client

# Elements of Standards

## Managers and Court

Standards also include:

- Obligations of Attorney Managers
  - 11 black letter charges
- Role of the Court
  - 11 suggestions for the Court to follow

# Models of Representation

## Common Aspects of Quality Representation

- Interdisciplinary Model
- Training for Attorneys
- Training other Child Welfare Professionals
- Outreach to Community

# Individual Programs

WA State Office of Public Defense (OPD) Parents' Representation Program

<http://www.opd.wa.gov/>

Initial Goals of the Program:

- Reduce the number of continuances requested by attorneys; including those based on their unavailability;
- Set maximum caseload requirements per full-time attorney;
- Enhance defense attorneys' practice standards, including reasonable time for case preparation and the delivery of adequate client advice;
- Support the use of investigative and expert services in dependency cases; and
- Ensure implementation of indigency screenings of parents, guardians, and legal custodians.

# Individual Programs

## Washington State OPD

To accomplish the goals:

- Legislature funded pilot program in two areas, rural and urban
- Increase in number of attorneys
- Funded support staff including paralegals, social workers, investigators and money for defense experts
- Adherence to practice guidelines
- Increased training and support from OPD
- Focus on “counselor-at-law role” in the attorney-client relationship

# Individual Programs

## Washington State OPD

Practice Guidelines reflect the Program's "counselor-at-law" philosophy. Categories include:

- Meet and communicate regularly with the parent
- Ensure parents have adequate access to services, including visitation
- Prevent continuances and delays within attorney's control
- Prepare cases well

# Individual Programs

## Washington State OPD

Program has been evaluated multiple times and outcomes include:

- 100% timeliness vs. 63.9% pre-pilot (permanency hearings)
- 50% decrease in rate juveniles aged-out of system
- 53.3% increase in family reunification
- 44% decrease in termination of parental rights
- Substantial decrease in foster care costs
- Party satisfaction
- Program now in 2/3 of WA counties



# Individual Programs

## Washington State OPD Most Recent Evaluation

Partners for our Children at Univ. of WA focused on timing to permanency for cases with OPD representation and in counties with no OPD

- Of children achieving permanency during the study, 68% reunified, 26% were adopted and 6% exited to guardianship
- OPD accelerated time to reunification by about one month and time to adoption and guardianship by about one year – impacts greater number of children reunifying
- Recommended that OPD be implemented in every WA county

# Individual Programs

Center for Family Representation (CFR) – NY  
[www.cfrny.org](http://www.cfrny.org)

- Initiate representation at investigation stage through all court proceedings
- Interdisciplinary representation – attorneys, social workers, parent advocates and paralegals.
- Training and practice assistance
- Policy reform
- Visiting Project
- **Cornerstone Advocacy** focuses on visitation, placement, services and conferences within the first 60 days

# Individual Programs

## Center for Family Representation – NY

### CFR's outcomes include

- Children of clients spend, on average, 73% less time in foster care than children in the city and state and in 50% of CFR cases, children never enter care at all, but instead stay at home with the services needed to help them stay safe and thrive.
- The average length of foster care for children of CFR clients is just under four months (compared to more than 11 months for children in New York City who return home in less than a year and nearly four years for all other children in care)

# Individual Programs

## Committee for Public Counsel Services –MA

[http://www.publiccounsel.net/Practice Areas/cafl pages/civil cafl index.html](http://www.publiccounsel.net/Practice_Areas/cafl_pages/civil_cafl_index.html)

- Mentoring for 18 months for new attorneys
- Must apply to be certified
- Separate appellate panel
- Must go through five day basic training course including trial skills
- Ongoing 8 hour CLE requirement
- Oversight committee can remove attorneys

# Individual Programs

## Community Legal Services – Philadelphia

<http://www.clsphila.org/Content.aspx?id=179>

### Strengths of Program:

- Lawyer and social worker or paralegal on every case
- Relatively small caseload
- Culture of zealous advocacy and commitment
- Involvement in between court appearances
- Part of larger legal services program
- Reasonable salaries

# How Can the National Parent Attorney Project Help?

- Free training or intensive TA
- Resources
- Policy to practice papers
- Listserv
- Website  
[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/parentrepresentation.html](http://www.americanbar.org/groups/child_law/projects_initiatives/parentrepresentation.html)
- SHARE YOUR IDEAS!!

# A Parent's Opinion

“When I arrived at court that morning, I was told this is my lawyer. My lawyer sat down with me five minutes, asked me a couple of things, and told me to admit my drug addiction. I didn’t know anything about a fact finding hearing. I wasn’t told what my rights were. I wasn’t told the procedure of the court. I didn’t have any idea what was happening, and I was very much afraid, because the important thing in my life had just been lost.”

# Contact Me

---

For more information, get in touch!

Mimi Laver

202-662-1736

[mimi.laver@americanbar.org](mailto:mimi.laver@americanbar.org)